Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1687

UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee for The Port Authority of New York and New Jersey Consolidated Bonds, Fortieth and Forty-First Series, on its own behalf and on behalf of all holders of Consolidated Bonds of The Port Authority of New York and New Jersey and all others similarly situated,

Appellant,

v.

THE STATE OF NEW JERSEY, BRENDAN T. BYRNE, Governor of the State of New Jersey, and WILLIAM F. HYLAND, Attorney General of the State of New Jersey,

Appellees.

On Appeal from the Supreme Court of New Jersey

BRIEF IN OPPOSITION TO MOTION AND BRIEF OF *AMICUS CURIAE*

WILLIAM F. HYLAND,
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Attorney for Appellees.

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Dated: June 7, 1976

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Counsel for respondents refused to consent to the filing of the brief amicus curiae and opposes the motion seeking leave to file such a brief.

Respondent respectfully objects to consideration of the amicus brief by the Court for the following reasons:

1. The motion and brief are not timely under Rule 42. Amicus briefs and motions may be filed only within a reasonable time prior to the consideration of the jurisdictional statement. This amicus brief and motion were filed on the same day as respondent's motion to dismiss the appeal. Respondent has thus been precluded from answering it fully. Inasmuch as amicus' counsel, Hawkins, Delafield and Wood, were co-counsel with Appellant's counsel below, there is no excuse for having failed to file the amicus brief contemporaneously with the jurisdictional statement.

2. Not only were counsel for the amicus counsel of record below, but the members of amicus are largely members of the plaintiff class represented by appellant.

3. The amicus brief consists primarily of sweeping factual assertions which were disproved at trial. Those assertions are the sort that should be answered in detail, a route not open to respondents because of the untimeliness of the filing. Two examples will suffice. Amicus asserts that "For the entire investment community this covenant epitomized the security. . . .' Yet appellant's chief witness testified that there is no such unified financial community. Tr. 368.

Amicus also maintains that the inviolability of bond agreements is essential to the marketing of municipal obligations everywhere. Yet the Massachusetts Supreme Court advised in 1956 that, "The features of [the bill establishing the Massachusetts Port Authority] purporting to grant exclusive privileges as long as any bonds are outstanding would be subject to revocation and amendment by succeeding Legislatures." Opinion of the Justices,

334 Mass. 721, 136 N.E. 2d 223, 232-233 (1956). Massachusetts Port Authority bonds sell without difficulty. Indeed, at trial appellant chose those bonds as a high-quality security with which to compare the bonds at issue in this case.

4. Finally, the amicus brief merely repeats appellant's central thesis—that municipal bonds enjoy especially privileged protection, denied to all other contracts, from the reasonable exercise of governmental power. That claim, rejected in the courts below and elsewhere throughout the country, presents no substantial federal question.

Respectfully submitted,

WILLIAM F. HYLAND,
Attorney General of the State of
New Jersey,
Attorney for Appellees.

By Special Counsel:

MICHAEL I. SOVERN,
MURRAY J. LAULICHT,
HAROLD S. H. EDGAR.